

# Exhibit 1



Jeffrey D. Blake  
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**VIA UPS AND ELECTRONIC MAIL**

August 11, 2023

Encore Wire Corporation  
c/o King & Spalding Law Firm  
Stephen Baskin  
1700 Pennsylvania Avenue, NW  
Suite 900  
Washington, D.C. 20006  
Email: sbaskin@kslaw.com

Re: Southwire Patent Portfolio

Dear Mr. Baskin:

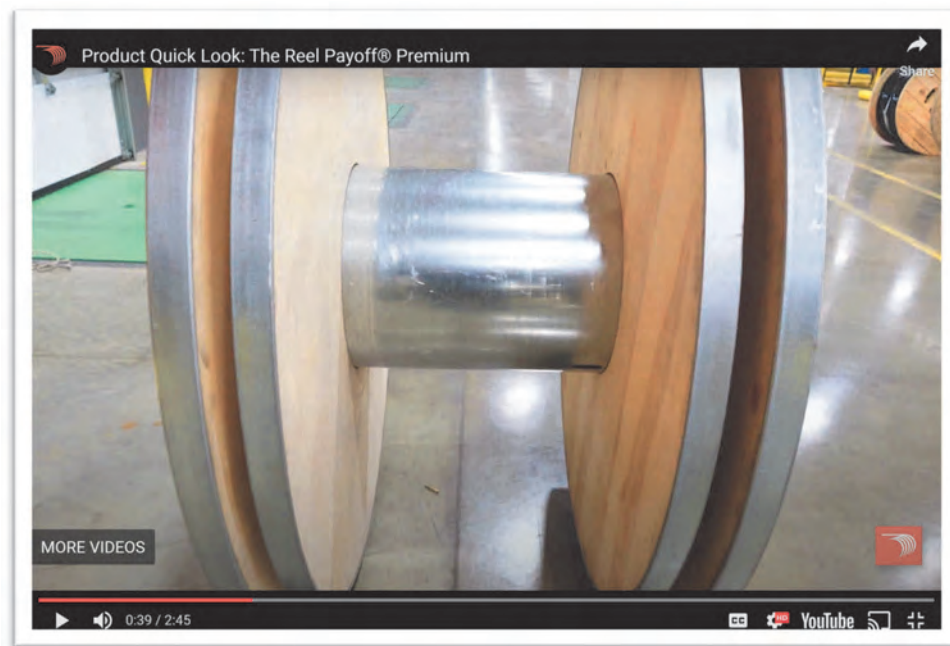
I represent Southwire Company, LLC (“Southwire”) in intellectual property matters. Southwire has invested significant time and money developing intellectual property rights in its innovative products. Southwire values this intellectual property, and Southwire takes the necessary steps to protect that property. I write concerning Southwire’s families of patents that appear to be relevant to Encore Wire Corporation’s (“Encore”) products. I have addressed this letter to you, as you have represented Encore in intellectual property matters, but please forward this letter to the appropriate Encore attorney if you are not the proper person to address the subject matter addressed herein.

A discussion of the relevant Southwire patents is provided below, and copies of these patents are enclosed for your review.

**Southwire’s “Reel” Patent Family**

Southwire has discovered that Encore is marketing a “Real Payoff® Premium” reel assembly product, as evidenced by this video from Encore’s website - <https://www.encorewire.com/products/reel-payoff-premium.html>. The Reel Payoff® Premium product is shown in the below snapshots from that video:

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### Snapshots of Reel Payoff® Premium Installation from Video on Encore Website

The Reel Payoff Premium product is also shown in the Encore sales sheet attached as Exhibit A.

After examination of the video on the Encore website and the Encore sales sheet, it is clear to Southwire that the Reel Payoff® Premium product may utilize the same technology as that

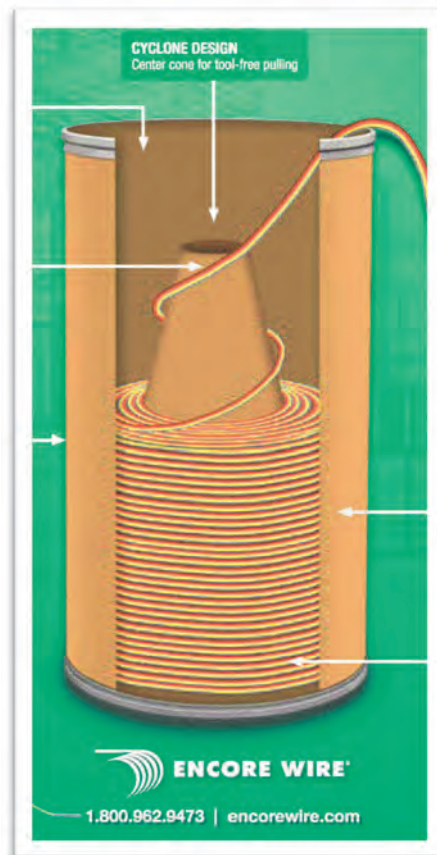
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claimed in at least Claim 9 of U.S. Patent No. 9,403,695; Claims 11, 12, 17 and 18 of U.S. Patent No. 10,266,366 and Claim 24 of U.S. Patent No. 11,358,831. As such, Southwire is writing to put Encore on actual notice of these patents.

Encore should immediately review these patents and take any action necessary to ensure that Encore or any Encore customer does not infringe (either literally or under the Doctrine of Equivalents) any of the claims of these patents through the manufacture, use, offer for sale, sale or importation of Encore products, including without limitation the Reel Payoff<sup>®</sup> Premium product. To the extent that Encore determines the subject matter claimed in any of these patents is practiced when using an Encore product, Encore should immediately take steps to remedy that situation and to inform Southwire of any infringing use or sales, as well as the amount of such sales.

#### Southwire's "Barrel" Patent Family

Further, Southwire has determined that Encore is marketing a "Cyclone<sup>®</sup> Barrel Pack" product, as evidenced by this video from Encore's website - <https://www.encorewire.com/products/cyclone-barrel-pack.html>. The Cyclone<sup>®</sup> Barrel Pack product is shown in the below snapshot from an Encore product sheet, attached as Exhibit B:



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**Snapshot of Cyclone<sup>®</sup> Barrel Pack from Sales Sheet on Encore Website**

After examination of the video on the Encore website and the Encore sales sheet, it is clear to Southwire that the Cyclone<sup>®</sup> Barrel Pack product may utilize the same technology as that claimed in at least Claim 1 of U.S. Patent No. 8,936,153. Further, based on the publicly-available information concerning the Cyclone<sup>®</sup> Barrel Pack product, it appears that the multiple conductors were placed in the barrels using the technology claimed in the claims of one or more of the following patents:

- U.S. Patent No. 9,145,219
- U.S. Patent No. 9,796,494
- U.S. Patent No. 10,427,816
- U.S. Patent No. 10,843,830
- U.S. Patent No. 11,267,598

To the extent Encore contends that the conductors were not placed in the barrels using these claimed methods, please explain in detail the reasons why.

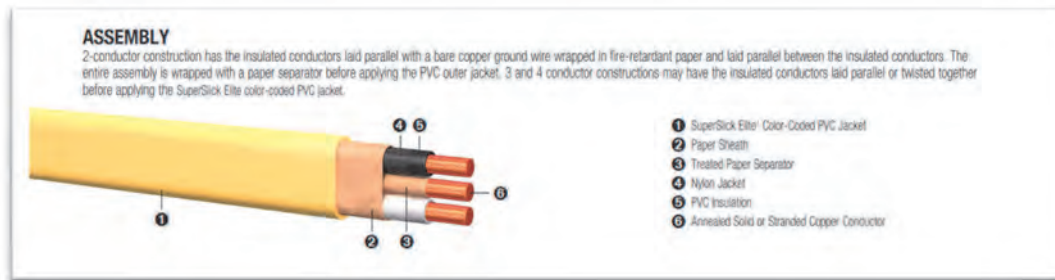
Moreover, on information and belief, Southwire understands that the Cyclone<sup>®</sup> Barrel Pack product may be used in conjunction with a restricting mechanism such that the combination utilizes the same technology as that claimed in at least Claim 1 of U.S. Patent No. 9,867,300 and Claim 1 of U.S. Patent No. 10,356,924. To the extent Encore contends that the Cyclone<sup>®</sup> Barrel Pack product does not make use of the claimed restricting mechanism, please explain in detail the reasons why.

Again, Southwire is writing to put Encore on notice of the above-discussed patents. Encore should immediately review these patents and take any action necessary to ensure that Encore or any Encore customer does not infringe (either literally or under the Doctrine of Equivalents) any of the claims of these patents through the manufacture, use, offer for sale, sale or importation of Encore products, including without limitation the Cyclone<sup>®</sup> Barrel Pack product. To the extent that Encore determines the subject matter claimed in any of these patents is practiced when using an Encore product, Encore should immediately take steps to remedy that situation and to inform Southwire of any infringing use or sales, as well as the amount of such sales.

Southwire's NM-B Patent

In addition, Southwire understands that Encore is marketing an NM-B Building Wire product, as evidenced by this video from Encore's website - <https://www.encorewire.com/products/nm-b-copper.html>. The NM-B Building Wire product is shown in the below snapshot from an Encore product sheet, attached as Exhibit C:

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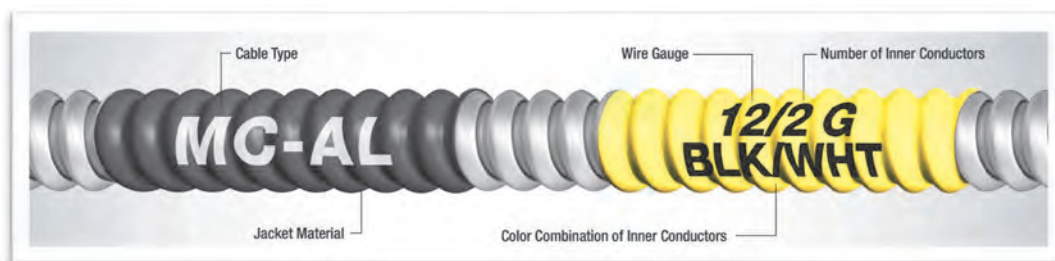
### Snapshot of NM-B Building Product from Sales Sheet on Encore Website

On information and belief, Southwire understands that as recently as September 2022, Encore's NM-B Building product utilizes the same technology as that claimed in at least Claim 16 of U.S. Patent No. 10,763,010. As such, Southwire is writing to put Encore on notice of this.

Encore should immediately review this patent and take any action necessary to ensure that Encore or any Encore customer becomes licensed or does not infringe (either literally or under the Doctrine of Equivalents) any of the claims of this patent through the manufacture, use, offer for sale, sale or importation of Encore products, including without limitation the NM-B Building product. To the extent that Encore determines the subject matter claimed in this patent is practiced when using an Encore product, Encore should immediately take steps to remedy that situation and to inform Southwire of any infringing use or sales, as well as the amount of such sales.

### Southwire's Machine Applied Label Patents

In addition, Southwire understands that Encore is marketing an armored cable product with machine applied labels, as evidenced by a product sheet for Encore's SmartColorID® technology. An example of the SmartColorID® technology is shown in the below snapshot from an Encore sales sheet for that technology, attached as Exhibit D:



### Snapshot of Encore Sales Sheet on for SmartColorID® technology on Encore Website



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Southwire understands that Encore's SmartColorID<sup>®</sup> technology utilizes the same technology as that claimed in at least Claim 1 of U.S. Patent No. 8,347,533 and at least Claim 1 of U.S. Patent No. 9,070,308. As such, Southwire is writing to put Encore on notice of these patents.

Encore should immediately review these patents and take any action necessary to ensure that Encore or any Encore customer becomes licensed or does not infringe (either literally or under the Doctrine of Equivalents) any of the claims of these patents through the manufacture, use, offer for sale, sale or importation of Encore products, including without any products using the SmartColorID<sup>®</sup> technology. To the extent that Encore determines the subject matter claimed in either of these patents is practiced when using an Encore product, Encore should immediately take steps to remedy that situation and to inform Southwire of any infringing use or sales, as well as the amount of such sales.

Finally, I note that we are willing to enter into a suitable confidentiality agreement to further any discussions and potential licensing. A draft confidentiality agreement is included for your review.

Please provide your response to this letter no later than August 25, 2023. Feel free to contact me with any questions.

Very truly yours,

MERCHANT & GOULD P.C.

A handwritten signature in blue ink, appearing to read "Jeffrey D. Blake", is written over a light blue circular background.

Jeffrey D. Blake

Encls.



#### OUR NEWEST VERSION OF THE REEL PAYOFF®

The new, premium version is now available and is **more durable** with enhanced weatherability! Similar to the original, the Reel Payoff® Premium allows you to pull directly from the cradle pallet. When off the pallet, it rotates within its own axis for 360-degree maneuverability; perfect for small spaces. Also, there's no jack-stand needed!

#### SINGLE SHEET HARD WOOD

With its single sheet, hard wood design, this enhanced version of the Reel Payoff® allows for **decreased pulling tension** and is more stable overall.

#### UPGRADED FEATURES

- 1 The metal drum is **pre-cut** with wire-tail slots, accommodating virtually any wire size. Slots are also contained and clean, which maintains the integrity of the reel.
- 2 The Reel Payoff® Premium is designed for increased usage versus the original Reel Payoff®, which means even more pulls!\*

#### METAL BAND

Maneuvering has never been easier! With our upgraded metal band, you can easily position our Reel Payoff® Premium in your desired location and get ready to pull! The metal band also reduces moisture absorption on the reel flanges.

#### ROLL-OFF POSITION

All Reel Payoff® Premiums are shipped in **roll-off position**, reducing material handling costs and possible damage. No need to flip the reel!






*\*Results may vary based on job specific situations or applications.*

**MORE MOBILITY**  
*PREMIUM PULLS*  
**REEL SAVINGS**

#### WHY CHOOSE THE NEW PREMIUM VERSION?

- Enhanced weatherability
- Increased maneuverability and durability
- Decreased set-up time
- Fits through finished 32" door way
- One time purchase from Encore Wire
- Reusable for future projects\*



encorewire.com |     



Scan to learn more.





**MORE JOBSITE USES.  
PREMIUM MATERIAL.  
MORE PULLS.**



**REDESIGNED WITH A METAL BAND AND SINGLE SHEET OF HARD WOOD PER FLANGE,  
THE REEL PAYOFF® PREMIUM NOW PROVIDES MORE STABILITY WITH LESS PULLING TENSION.**

**MAXIMIZE YOUR  
FOOTAGE**

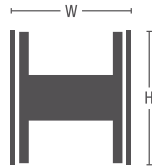
#### THHN/THWN-2 & XHHW-2 SuperSlick Elite®

Wire Size	Single Conductor			
	REEL SIZES (in)			
	48		55	
	Copper	Aluminum	Copper	Aluminum
2 AWG	15,500	17,000	20,000	23,000
1 AWG	12,000	13,000	15,000	17,000
1/0 AWG	10,000	11,000	12,500	15,000
2/0 AWG	9,000	10,000	10,000	12,500
3/0 AWG	7,000	7,750	8,000	10,500
4/0 AWG	6,000	6,500	6,500	8,250
250 KCMIL	4,500	5,500	5,500	7,000
300 KCMIL	3,500	4,500	4,500	6,000
350 KCMIL	3,500	4,000	3,500	5,000
400 KCMIL	3,000	3,500	3,500	4,500
500 KCMIL	2,500	3,000	3,000	4,000
600 KCMIL	2,000	2,250	2,500	3,000
750 KCMIL	1,500	1,800	2,000	2,500
1000 KCMIL	1,250	1,400	1,500	2,000

*\*Footages of other product types may vary*

REEL  
SIZE  
CHART

Reel Size	W	H
48"	28"	52"
55"	30"	58"



#### Metal Clad & Tray Cable

Wire Size	Cabled Products							
	REEL SIZES (in)							
	48	55	48	55	48	55	48	55
	Copper MC		Aluminum MC		Copper Tray Cable with Ground		Aluminum Tray Cable with Ground	
1/0-3	1,200	1,700	1,200	1,700	1,350	2,000	1,350	1,900
1/0-4	1,000	1,600	1,000	1,600	1,250	1,800	1,250	1,800
2/0-3	950	1,500	950	1,500	1,200	1,750	1,000	1,750
2/0-4	900	1,450	900	1,450	1,000	1,500	950	1,500
3/0-3	850	1,400	850	1,400	950	1,400	800	1,400
3/0-4	750	1,200	750	1,200	800	1,250	750	1,250
4/0-3	700	1,150	700	1,150	750	1,200	700	1,200
4/0-4	675	950	675	950	700	1,000	650	1,000
250/3	650	900	650	900	650	900	625	900
300/3	500	800	500	800	625	850	550	850
350/3	400	650	400	650	550	800	-	800
500/3	-	500	-	500	-	600	-	600
600/3	-	450	-	400	-	450	-	450
750/4	-	250	-	250	-	300	-	300

*\*Footages of other product types may vary*



All Encore Wire products are born in the USA and raised in Texas.  
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Patents: [encorewire.com/patents](https://encorewire.com/patents)

**1.800.962.9473**  
**[encorewire.com](https://encorewire.com)**



**CYCLONE®**  
BARREL PACKS

# NO TOOLS JUST PULL STRAIGHT FROM THE BARREL

## NO EXTRA TOOLS NEEDED

Remove the Cyclone Barrel Pack lid, detach wire from its secured position and attach wire to your pull rope.

## CYCLONE DESIGN

Center cone for tool-free pulling

## FULLY CUSTOM BARREL PACK

Available in 14 AWG through 10 AWG up to 7 conductors; paralleled or cabled, eliminating the need for multiple reels.

## PORTABLE & EASY TO SET UP

Handle the Cyclone Barrel Pack with any industrial dolly or cart; no need to buy special equipment or tools.

## AVAILABLE IN 55 AND 75 GALLON DRUMS



**Save  
80%  
TOTAL TIME**

SAVE 84% ON PULL TIME

SAVE 50% ON CLEAN-UP TIME

SAVE 75% ON SETUP TIME

## ENVIRONMENTAL RESPONSIBILITY

Lower the amount of wire scrap produced, while decreasing the waste produced by packaging.

## EFFORTLESS PULLING

No tangles, no tools, just pull!  
See it for yourself by scanning the QR code.



**ENCORE WIRE®**

1.800.962.9473 | [encorewire.com](http://encorewire.com)



## ADVANTAGES OF THE CYCLONE BARREL PACK

- 120V/208Y and 277V/480Y color-coding
- Portable and easy to set up
- Barrel serves as an instant payoff system
- Eliminates the need for multiple reels
- Lowers the amount of wire scrap produced
- Less waste created by barrel pack vs. reel
- Money and time savings on job site or OEM shop
- Less space on a truck than traditional reels
- Longer continual runs
- Available in 14 AWG through 10 AWG up to 7 conductors
- Easily customized to any specific job
- Available in 55 and 75 gallon drums
- THHN-2/THWN-2, XHHW-2, USE-2 and MTW

## THHN/THWN-2 COPPER FOOTAGE CHART STRANDED

Wire Type	Length (ft)	Total Footage (ft)
14/2 STR THHN/THWN-2	10,500'	21,000'
14/3 STR THHN/THWN-2	9,000'	27,000'
14/4 STR THHN/THWN-2	7,000'	28,000'
14/5 STR THHN/THWN-2	7,000'	35,000'
14/6 STR THHN/THWN-2	5,000'	30,000'
14/7 STR THHN/THWN-2	5,000'	35,000'
12/2 STR THHN/THWN-2	8,000'	16,000'
12/3 STR THHN/THWN-2	6,750'	20,250'
12/4 STR THHN/THWN-2	5,000'	20,000'
12/5 STR THHN/THWN-2	5,000'	25,000'
12/6 STR THHN/THWN-2	3,000'	18,000'
12/7 STR THHN/THWN-2	3,000'	21,000'
10/2 STR THHN/THWN-2	5,000'	10,000'
10/3 STR THHN/THWN-2	4,250'	12,750'
10/4 STR THHN/THWN-2	3,000'	12,000'
10/5 STR THHN/THWN-2	3,000'	15,000'
10/6 STR THHN/THWN-2	2,500'	15,000'
10/7 STR THHN/THWN-2	2,500'	17,500'

For other wire types such as XHHW-2 & USE-2, please contact your local Encore Wire Sales Representative.



All Encore Wire products are born in the USA and raised in Texas.  
© 2016 Encore Wire Corporation. All Rights Reserved. Encore is a trademark of Encore Wire Corporation.  
SuperSlick Elite® Manufactured under Patent No. 8,658,576.



**1.800.962.9473**  
**encorewire.com**



## TYPE NM-B - COPPER CONDUCTOR - 600V

### ENGINEERING SPECIFICATIONS

#### Standards

Underwriters Laboratories Standards UL-83, UL-719, UL-1581, UL-2556; Federal Specification A-A-59544; ASTM-B3 and B8; New York State DOS-16120-87-1222-1048; NEMA RV 2-2011; NFPA 70 (NEC®) Article 334; ARRA 2009 Section 1605 "Buy American" Compliant; RoHS Compliant; MasterSpec Division 26 Sections 260519, 260523; UL Listing #E-123775



### CONSTRUCTION

#### Conductors

Solid 14-10 AWG soft, uncoated copper, per ASTM-B3; Stranded 8 AWG conductor and larger uncoated, copper ASTM-B8

#### Insulation

Color-coded Polyvinyl Chloride (PVC) compound meeting the required thickness of Type THHN or THWN-2 with a heat-stabilized Nylon jacket rated for 90°C in dry locations.

#### Grounding Conductor

Soft, uncoated copper per ASTM-B3 and/or ASTM-B8

#### Jacket

A 30-mil, color-coded, flame retardant and moisture resistant PVC jacket is applied over the completed assembly as follows: 14 AWG White | 12 AWG Yellow | 10 AWG Orange | 8 AWG Black | 6 AWG Black

### APPLICATIONS

Type NM-B (Non-metallic sheathed cable) has a broad range of usage as defined in Article 334 of the National Electrical Code (NEC). Type NM-B cable is commonly used for residential wiring of luminaries, devices and appliances. Type NM-B ampacity limitation shall be in accordance with the 60°C conductor temperature rating, as specified in the NEC. Type NM-B is rated 600-volt for both exposed and concealed work in normally dry locations. Type NM-B may be installed or fished in air voids and joints and in masonry block or tile walls where such walls are not exposed to, nor subject to, excessive moisture or dampness.

### ASSEMBLY

2-conductor construction has the insulated conductors laid parallel with a bare copper ground wire wrapped in fire-retardant paper and laid parallel between the insulated conductors. The entire assembly is wrapped with a paper separator before applying the PVC outer jacket. 3 and 4 conductor constructions may have the insulated conductors laid parallel or twisted together before applying the SuperSlick Elite color-coded PVC jacket.



- 1 SuperSlick Elite® Color-Coded PVC Jacket
- 2 Paper Sheath
- 3 Treated Paper Separator
- 4 Nylon Jacket
- 5 PVC Insulation
- 6 Annealed Solid or Stranded Copper Conductor

Size (AWG or KCMIL)	No. of Strands	Ground Wire Size (AWG)	Insulation Thickness (in)		Allowable Ampacity (Amps) <sup>2</sup>	Outside Diameter (in)	Approximate Net Weight (lbs/1000 ft)	Standard Packaging (ft)
			PVC	Nylon				
14/2 G <sup>1</sup>	Solid	14	0.015	0.004	15	0.166 x 0.333	57	25', 50', 100', 250', 500', 1000' RL/EZ, 5000' Reels
12/2 G <sup>1</sup>	Solid	12	0.015	0.004	20	0.182 x 0.382	82	25' 50' 100' 250' 500' 1000' RL/EZ, 4000' Reels
10/2 G <sup>1</sup>	Solid	10	0.020	0.004	30	0.213 x 0.464	123	25' 50' 100' 250' 500' 1000' 5000' Reels
8/2 G <sup>1</sup>	7	10	0.030	0.005	40	0.290 x 0.580	185	125' 250' EZ, 500' 1000' 2500' Reels
6/2 G <sup>1</sup>	7	10	0.030	0.005	55	0.330 x 0.695	256	125' 250' EZ, 500' 1000' 2500' Reels
14/3 G <sup>1</sup>	Solid	14	0.015	0.005	15	0.166 x 0.438	74	25' 50' 100' 250' 500' 1000' 5000' Reels
12/3 G <sup>1</sup>	Solid	12	0.015	0.004	20	0.345	107	25' 50' 100' 250' 500' 1000' 5000' Reels
10/3 G <sup>1</sup>	Solid	10	0.020	0.004	30	0.430	165	25' 50' 100' 250' 500' 1000' 2500' 5000' Reels
8/3 G	7	10	0.030	0.005	40	0.555	251	50' 125' 250' EZ, 500' 1000' 2500' Reels
6/3 G	7	10	0.030	0.005	55	0.612	352	50' 125' 250' EZ, 500' 1000' 2500' Reels
4/3 G	7	8	0.040	0.006	70	0.820	565	125' 250' EZ, 500' 1000' Reels
2/3 G	7	8	0.040	0.006	95	0.945	841	125' 250' EZ, 500' 1000' Reels
14/4 G & 14/2-2 G <sup>3</sup>	Solid	14	0.015	0.004	15	0.345	90	250' 1000' 5000' Reels
12/4 G & 12/2-2 G <sup>3</sup>	Solid	12	0.015	0.004	20	0.385	132	250' 1000' 5000' Reels
10/4 G <sup>3</sup>	Solid	10	0.020	0.004	30	0.540	205	250' 1000' 5000' Reels

<sup>1</sup> SuperSlick Elite manufactured under Patent No. 8,658,576

<sup>2</sup> Ampacity of conductors are based on NFPA 70 (NEC) Table 310.16. See 110.14(C), 240.4(D) and 310.15(B) and (C) for other limitations where applicable.  
Note: Additional ampacity limitations, adjustments or corrections may apply per 310.15 and 240.4 of the NEC.

<sup>3</sup> Color-Coding for four-color conductor NM-B Black, White, Red and Blue. 1 Color-Code for 2-2 conductor is Black, Red, White and White with a Red Stripe.  
The above data is approximate and subject to normal manufacturing tolerances.

**PRINT LEGEND:** ENCORE WIRE CORPORATION (SIZE) WITH GROUND TYPE NM-B 600 VOLTS (UL) DATE/TIME/OPER/QC



800.962.9473

www.encorewire.com



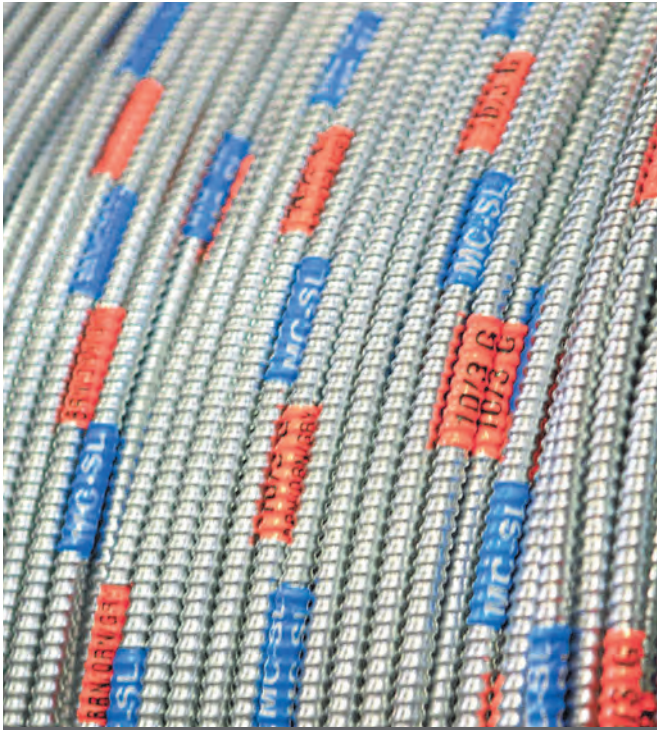
# SMART **COLOR** iD<sup>®</sup>

Available only through Encore Wire

SmartColorID<sup>®</sup> is a patented, color-coded labeling system developed by Encore Wire<sup>®</sup> for metal-clad and armor-clad cables.  
(Available in sizes 8 AWG - 14 AWG)



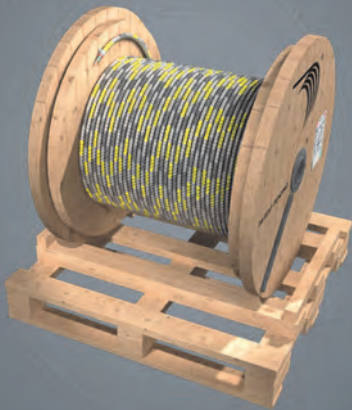




## What makes SmartColorID the best labeling system in the industry?

- Quickly and accurately identify cable
- Verify wire gauge, number of conductors, cable and jacket type, and colors of inner conductors
- No need for cutting, splitting or slashing into cable, causing damage, just to identify inner conductors
- Labels repeated every 18 inches throughout length of cable
- Easy to use and read

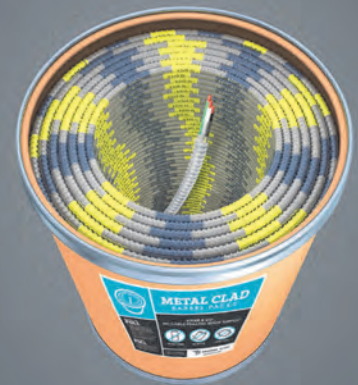
### THE REEL PAYOFF



### GAYLORD BOX



### MC BARREL



**OUR MC AND AC PRODUCTS CAN BE PACKAGED USING THE REEL PAYOFF, GAYLORD BOXES, OR MC BARRELS\***

For longer, continuous runs,  
please contact your local sales rep.

View all of our MC Products and  
specifications online at [encorewire.com](http://encorewire.com).



Scan QR code to learn  
more about SmartColorID®



All Encore Wire products are born in the USA and raised in Texas.  
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1.800.962.9473  
[encorewire.com](http://encorewire.com)  
f y t i n

# KING & SPALDING

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August 21, 2023

**VIA EMAIL** – jblake@merchantgould.com

Jeffrey D. Blake  
Merchant & Gould P.C.  
191 Peachtree Street NE  
Suite 3800  
Atlanta, GA 30303-1740

Re: Southwire Company, LLC August 11, 2023 Letter

Dear Mr. Blake:

As you know, King & Spalding represents Encore Wire Corporation (“Encore Wire”) in connection with its intellectual property and other matters. Please continue to direct all communications on this matter to me.

We confirm receipt of your August 11, 2023 letter regarding Southwire Company LLC’s (“Southwire”) belief that certain of its patent families “appear to be relevant” to Encore Wire’s products -- United States Patent Nos. 8,347,533; 8,936,153; 9,070,308; 9,145,219; 9,403,659;<sup>1</sup> 9,796,494; 9,867,300; 10,266,366; 10,356,924; 10,427,816; 10,763,010; 10,843,830; 11,267,598; and 11,358,831.

Encore Wire respects the intellectual property rights of others. Your letter, however, fails to provide any detail of how or why these patents may be of interest to Encore Wire. For many of the patents, Southwire fails to set forth a specific patent claim that is allegedly relevant or covers an Encore product. For those where a claim is identified, there are no specifics or claim chart provided that are directed towards the accused Encore products. Without that level of information

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<sup>1</sup> The August 11 Letter includes U.S. Patent No. 9,403,695, which identifies 3M Innovative Properties Company as the owner. We assume that was intended to be U.S. Patent No. 9,403,659. If this assumption is not correct, please let us know.

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and detail, it is not practical for us to be in a position to conduct a careful review of the allegations. For at least these reasons, the August 11 Letter fails to adequately provide Encore Wire with notice under 35 U.S.C. §§ 1 *et seq*, and further lacks sufficient information to determine why a license to any of patents may be necessary.

Accordingly, please provide us with additional information, which should at a minimum include for each patent identified claims with claim charts that set forth an element-by-element description of where and how each element of each asserted claim is found in an Encore Wire product. Once we receive this additional information, we can, and will, conduct a meaningful review to determine whether a license as to any of the patents is of interest to Encore Wire.

This letter is sent without prejudice to any rights or remedies available to Encore Wire, all of which are hereby expressly reserved.

If you have any questions, or wish to discuss the matter further, please feel free to contact me.

Best regards,



Stephen E. Baskin  
Partner



Jeffrey D. Blake  
404.954.5040  
jblake@merchantgould.com

VIA ELECTRONIC MAIL

September 7, 2023

Stephen Baskin  
King & Spalding  
1700 Pennsylvania Avenue, NW  
Suite 900  
Washington, D.C. 20006  
Email: sbaskin@kslaw.com

Re: Southwire Patent Portfolio

Dear Mr. Baskin:

I write in response to your August 21, 2023 letter concerning Southwire's patent portfolios as applied to Encore Wire Corporation's ("Encore") products. We were disappointed that your response letter did not address our offer to enter into a suitable confidentiality agreement to further any discussions and potential licensing. Southwire actively protects its intellectual property, and, as part of that effort, Southwire regularly offers to meet with parties in a confidential manner to discuss intellectual property issues, and we frequently have been successful with these discussions. Southwire repeats its offer to enter into a confidentiality agreement and engage in discussions with Encore to discuss any or all of the reel patent family, barrel patent family, NM-B patent or machine applied label patent family. Please let me know if Encore is interested in this offer.

In the meantime, Southwire disagrees with the statement in your letter that Southwire's "August 11 letter fails to adequately provide Encore Wire with notice under 35 U.S.C. §§ 1 *et seq.*" Baskin Ltr. at 2. Contrary to your assertion, Southwire's August 11, 2023 letter did put Encore on actual notice of each of the identified patents pursuant to the requirements of 35 U.S.C. § 287(a). As you are no doubt aware, "[a]ctual notice requires the affirmative communication of a specific charge of infringement by a specific accused product or device." *Arctic Cat Inc. v. Bombardier Recreational Products Inc.*, 950 F.3d 860, 864 (Fed. Cir. 2020) quoting *Amsted Indus. Inc. v. Buckeye Steel Castings Co.*, 24 F.3d 178, 187 (Fed. Cir. 1994). However, "the requirement of 'a specific charge of infringement' set forth in *Amsted* does not mean that the patentee must make an 'unqualified charge of infringement.'" *Gart v. Logitech, Inc.*, 254 F.3d 1334, 1345-46 (Fed. Cir. 2001). Instead, "the actual notice requirement of § 287(a) is satisfied when the recipient is informed of the identity of the patent and the activity that is believed to be an infringement, accompanied by a proposal to abate the infringement, whether by license or otherwise." *Lubby*



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*Holdings LLC v. Chung*, 11 F.4th 1355, 1360 (Fed. Cir. 2021) (quoting *SRI Int'l, Inc. v. Advanced Tech. Labs.*, 127 F.3d 1462, 1470 (Fed. Cir. 1997)).

Here, it is clear that Southwire satisfied the standard to put Encore on actual notice of the reel patent family, barrel patent family, NM-B patent and machine applied label patent family. Southwire made a specific charge of infringement by a specific product with respect to each of these patent families. That charge included identification of the Southwire patents (including identification of specific claims for many of the patents), identification of the specific Encore products at issue, and a proposal to abate the infringement (either by remedying infringement or the possibility of a license). *See SRI*, 127 F.3d at 1470 (“It is not controlling whether the patentee threatens suit, demands cessation of infringement, or offers a license under the patent.”). Your letter suggests that Southwire was required to provide claim charts for each patent in order to effectuate actual notice (Baskin Ltr. at 1), but the above-discussed caselaw demonstrates that is not correct. As discussed in detail for each patent family below, Southwire’s August 11 letter provided the information required to put Encore on actual notice.

#### Southwire’s “Reel” Patent Family

For the reel patent family, Southwire specifically identified the following patents: at least Claim 9 of U.S. Patent No. 9,403,659 (you are correct that this was the intended number); Claims 11, 12, 17 and 18 of U.S. Patent No. 10,266,366 and Claim 24 of U.S. Patent No. 11,358,831. Southwire also identified the “Real Payoff<sup>®</sup> Premium” reel assembly product. Further, Southwire demanded in my August 11, 2023 letter that Encore or any Encore customer immediately remedy any infringement (either literally or under the Doctrine of Equivalents) of any of the claims of these patents.

#### Southwire’s “Barrel” Patent Family

For the barrel patent family, Southwire specifically identified the following patents: U.S. Patent No. 8,936,153 (Claim 1); U.S. Patent No. 9,145,219; U.S. Patent No. 9,796,494; U.S. Patent No. 10,427,816; U.S. Patent No. 10,843,830; U.S. Patent No. 11,267,598; U.S. Patent No. 9,867,300 (Claim 1); and U.S. Patent No. 10,356,924 (Claim 1). Southwire also identified the Cyclone<sup>®</sup> Barrel Pack product. Further, Southwire demanded in my August 11, 2023 letter that Encore or any Encore customer immediately remedy any infringement (either literally or under the Doctrine of Equivalents) of any of the claims of these patents.

#### Southwire’s NM-B Patent

For the NM-B patent, Southwire specifically identified at least Claim 16 of U.S. Patent No. 10,763,010. Southwire also identified that, as recently as September 2022, Encore’s NM-B Building product was utilizing the technology claimed in that claim. In addition, Southwire demanded in my August 11, 2023 letter that Encore or any Encore customer immediately remedy any infringement (either literally or under the Doctrine of Equivalents) of any of the claims of



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these patents. Alternatively, Southwire offered that Encore could become licensed under this patent.

Southwire's Machine Applied Label Patents

For the machine applied label patents, Southwire specifically identified the following patents: at least Claim 1 of U.S. Patent No. 8,347,533 and at least Claim 1 of U.S. Patent No. 9,070,308. Southwire also identified the SmartColorID<sup>®</sup> technology. In addition, Southwire demanded in my August 11, 2023 letter that Encore or any Encore customer immediately remedy any infringement (either literally or under the Doctrine of Equivalents) of any of the claims of these patents. Alternatively, Southwire offered that Encore could become licensed under these patents.

In view of the above, Southwire has provided ample information to Encore to put Encore on actual notice of Southwire's patents and to allow Encore to fully evaluate its position with respect to Southwire's patents. Nonetheless, I repeat the offer stated at the beginning of this letter, and in my August 11, 2023 letter, to meet with Encore under a suitable confidentiality agreement to discuss any further questions that Encore may have.

Please provide your response to this letter no later than September 15, 2023. Feel free to contact me with any questions.

Very truly yours,

MERCHANT & GOULD P.C.

A handwritten signature in blue ink, appearing to read "Jeffrey D. Blake", is positioned above the printed name.

Jeffrey D. Blake